

1904-011  
Lee Co.

Chancery Causes: Robert W. Orr vs. D. L. Jesse &c

Reasor, Olinger, School Board of Yocum Station District

CA - Contract Dispute  
T - Property  
Schools



TO THE HON. H. A. W. SKERN,

JUDGE OF THE CIRCUIT COURT OF LEE COUNTY, VIRGINIA:

Your orator, R. W. Orr, humbly complaining, shows unto your honor that he owns in fee simple a tract of land near the present town of Dryden in the County of Lee and State of Virginia, containing three hundred acres more or less, which was acquired by him in deed from John Pennington and ~~and~~ Craig Pennington and wife dated August 2nd, 1890 and of record in the Lee County Court Clerk's Office and he is now and has been since he acquired said land living on said land in the mansion house thereon.

That at short time prior to his purchase of the said Pennington land the said Penningtons and one D. L. Jessee united in conveying about one acre of ground <sup>near the mansion house</sup> to a number of citizens of the neighborhood <sup>Joshua Hobbs and others</sup> as joint owners for high school purposes. one-half acre of this ~~x~~ tract of land came out of the Pennington land and one-half acre out of the Jessee land, the division line between the two tracts being in common and the lot thus conveyed being one solid lot, and a right to use water from a certain spring near the said lot was granted by the said Pennington's for water to be used only in connection with the High School. The grantees in said deed were to name trustees and were to erect upon the said lot a school building and were to conduct a high school thereon. said building was erected and a high school was maintained for a short time and then abandoned. After you orator made his purchase in 1890, no term of the said high school or of any school ~~was~~ held in accordance with the provisions of the aforesaid deed has been held in the aforesaid building but the trustees of the said school have rented out the said school building <sup>nearly</sup> every year since your orator acquired said land to the trustees of the public free school in Yocum <sup>Station</sup> District No. \_\_\_\_\_, ~~x~~ that being the district in which said school building is located The said school lot ~~in~~ <sup>the</sup> which building is on is not on any public high way, but is back from the same about 300 yards and in order to reach the same with any convenience nearly



all the pupils of said school must go through and across the lands of your orator. Your orator has permitted this to go on without complaint for a number of years, but he has suffered great inconvenience and loss therefrom and what was at first a privilege ~~is~~ ~~now~~ granted is now becoming a right claimed by those going to school. The aforesaid spring is the only source of your orator for water for domestic purposes and the class of small children and thoughtless children who comprise the free school constantly ~~defoul~~ <sup>defile</sup> and weaken said spring and in dry times the water used by said school almost deprives your orator from water for his mansion house. These acts have become a nuisance to your orator and such that he cannot ~~much~~ longer in justice to himself endure.

The trustees of the school board of Yocum Station District No. \_\_\_\_\_ of the County of Lee, are now the said D. L. Jessee, John Reasor and M. V. Olinger and ~~re~~ have recently undertaken to buy the aforesaid school lot and building from the said trustees of the high school and have entered into a contract with them therefor, which contract must be approved by your honor pursuant to Section 1488 of the code of virginia, before the same can become operative. Your orator states that the said school house is less than 400 yards of his mansion house and he states that his mansion house is in the country and not in a town, incorporated or <sup>unincorporated</sup> ~~incorporated~~, and he says that under section 1488 of the Code of virginia it is not competent for a school Board to acquire property for school purposes within 400 yards of a Mansion House ~~without~~ the consent of the owner. He states that he is <sup>not</sup> ~~is~~ willing for this lot and building to be acquired for public school purposes and he has so notified the said trustees and has notified them that he would not longer permit the children of the neighborhood to pass over and across his lands to attend the said school.

He is advised that it is the duty of the district school board to provide a school lot with perfect title in said board and to provide that there may be public passqays either on the



county road or otherwise to and from said location. And that the present attempt of the said school trustees to operate a school in property to which the district school board has no title and at a place where there is no public pass-way to and from the same is unlawful and will be enjoined by a court of equity.

WHEREFORE, being without remedy save in a court of equity the prayer of your orator is that D. L. Jessee John Peasor and M. V. Olinger, constituting the said school board of Yocum Station District No \_\_\_\_, be made parties to this bill and be required to answer same, but not under oath; that the said trustees be enjoined from acquiring title to the lot of land with building thereon which has been heretofore described and from conducting a public free school in said building and that they be required to proceed as the law directs to procure by condemnation or otherwise a lot of ground and upon the same erect a suitable building and have the public free school for said neighborhood conducted therein and for such other, further and general relief as to equity may seem meet and the nature of his cause may require and your orator will ever pray etc.

*Irvin & Shump P.R.*

*Robert W Orr*

VIRGINIA, COUNTY OF WISCONSIN, TO-WIT:

I, W. B. Carnes a Notary Public in and for the county aforesaid in the State of Virginia, do certify that Robert W. Orr whose name is signed to the foregoing bill for injunction this day made oath before me in my county aforesaid that the allegations are true as he verily believes.

*W. B. Carnes* N.P.



Injunction granted pursuant to the prayer of the foregoing bill enjoining and restraining the said defendants D. L. Jessee John Reasor and M. V. Olinger who comprise the School Board of Yocum District No. \_\_\_\_\_ of the County of Lee and State of Virginia or their successors in office from further proceeding to acquire by purchase or condemnation for public free school purpose the lot of ground in the bill mentioned and described, being a lot of about 1 acre near the residence of the said Robert W. Orr near Dryden in Lee County, Virginia, being the same lot which was conveyed by Craig Pennington and D. L. Jessee and others to Joshua Hobbs and other citizens of the neighborhood for the purpose of conducting a high school thereon, which deed is dated \_\_\_\_\_ day of \_\_\_\_\_ 188\_\_ and of record in Lee County Circuit Court Clerk's Office; and said defendants are further enjoined from any longer conducting a public free school in the building on the aforesaid lot until the further order of this court. But this injunction shall not be effective until the plaintiff or some one for him shall execute bond before the clerk of the circuit court of Lee County in the sum of \$500<sup>00</sup> as the law directs.

Given under my hand this the 30<sup>th</sup> day of August 1904.

J. A. W. Siler

JUDGE OF THE CIRCUIT COURT OF

LEE COUNTY, VIRGINIA.

TO THE CLERK OF LEE COUNTY, VIRGINIA.



Robert W. Orr.

Bill in chg  
D. L. Jesse et al.

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Filed Aug. 31, 1904,

H. C. Ewing Clerk.

1904. 1<sup>st</sup> Sept. Rules.

Bill filed, Sp. a.

Excluded & R. N. ....

2<sup>nd</sup> Sept. Rules.

Decumens & ans.  
filed & Cause set  
for hearing by  
plaintiff.

Plffa

Costs:

Clerk \$ 5.84

~~Shff. 1.50~~

~~For 1.50~~

Deft-

Costs record

Clerk \$1.36

Atty 15.00



R.W.Orr , Complainant, )  
vs ) In Chancery.  
D.L.Jessee,et als, Deft's )

To the HON.H.A.W.Skeen,Judge of the Circuit Court for Lee County,  
Virginia:

The joint and separate answer of D.L.Jessee,John Reaso,and M.V. Olinger,Trustees of the Public Schools for the Youkum Station District,to a bill of complaint filed against them in your honors court,by R.W.Orr.

For answer to said bill,or to so much thereof as they are advised it is material for them to answer,answering these respondents say:

They suppose it is true that the complainant is the owner in fee simple of a tract of land near Dryden in said county,which was acquired by deed from John and Craig Pennington,and that the said compainant is now and has been for sevea~~t~~ years residing in the mansion house thereon.

That it further true that D.L.Jessee and the said Penningtons united in conveying one acre of ground in said community to Joshua Hobbs and others as joint owners,for the purpose of erecting thereon a school house wherein a school of somewhat higher order than the common public school could be taught,but it was intended by all the stock holders of said house and the said Penningtons at the time that the public school of the community should be taught in said house along with the high s school,and as a part thereof,so long as said house should be used for said purpose.It was also the pur pose of all the parties to said deed that said school both public and high should have right to use water from said spring,the stock-holders of said house knowing full well at the time that it would be impossible to maintain a high school in said building unless the teachers employed to teach in said school were teachers in the public schools of the county and largely paid for their services out of the public school funds

The deed for said lot of land was made in the year 1883,a copy of which deed is herewith filed as a part of this answer marked



[A], and prayed to so read and treated. And in order that the children of the community could reach the public school at said house as well as the high scholl, the said Craig and John Pennington permitted and invited the patrons of said school grade a wagon road over the lands now claimed by the complainant from the public road to said scholl house, which said road has been travelled by the x students attending said scholl for the last twenty one years without molestation or hind~~rance~~ erance from any one.

That since the erection of said building in the year 1883, to the present time there has never been a year that the public shhool has not been conducted in said building nor a single year that a teacher has not been employed to teach in said house ahigh school in connection with the public school. The teacher now engaged to teach the public school is also supplemented to teach banches of learning higher than required by public schools. Nor is it true true that the high scho~~l~~l in said building has ever been abandoned or that the trustees of said building ever rented the said house to the public school trustees for public school purposes, but on the contrary the trustees of said house have never received one cent for rent of said house from any source, but have always permitted the public school taught in said house without compensation, in order to get the public money to help pay the teachers for the kind of high school contemplated from the first by the stock-holders of said house and the grantors of said property.

Nor can these respondents see wherein the said complainant can in any way be injured by the children going to and from said school over the road that was given by the said Penningtons to said house especially when he permits the public at large to pass over the same without any hinderance or protest.

These respondents deny that the spring of said complainant is befouled by the children attending said school; but that the same if befouled at all is done by the cattle of the said complainant that continually lie around said spring. Nor is said spring the only source of water for domestic purposes of the said complainant. But he has a very large and a very bold bpring near his mansion



from which his said grantors used water altogether for domestic purposes.

These respondents deny that said house is within four hundred yards of the Mansion house of said respondent, and require strict proof of same: but if it were within four hundred yards of his mansion house, are advised that that would be immaterial as they have never attempted to have said land and house condemned for a public school.

And now having fully answered the complainants bill, these respondents beg to hence dismissed with their proper costs in behalf expended. And they will ever pray, etc.

J. B. Noel p.d



R.W.Orr, Complainant, )  
Vs ) In Chancery, in the Circuit Court for  
D.L. Jessee, et als, Deft. ) Lee County, Va.

The joint and separate demurrer of D.L. Jessee, John Reaser, and M.V. Olinger, Trustees of the Public Schools for the Yokum Station School district, No. \_\_\_\_\_, to a bill of complaint filed against them by R.W. Orr, in the Circuit court for Lee County, Virginia.

And for demurrer thereto, the said defendants say that said bill is not sufficient in law to require them to answer, for the following reasons, to-wit:

(1)--If the children trespass upon his (the complainant's) land in passing over said land to school, or by befouling his spring he has a complete remedy at law.

(2)--Under the public school law of Virginia, the defendants

could not secure title to the property in question, for public school purposes, without the approval of your honor, and an injunction against said trustees would be the proper way to prevent your honor from approving the deed for said property.

(3)--The fact that the land proposed to be acquired for a public school is within four hundred yards of the complainant's mansion house, is no reason why it should not be acquired by purchase, as section 1488 of the code applies only to land condemned for public schools.

~~J. C. Noel~~  
))  
(4) A school district is a body corporate and must be sued as such. The district and not the trustees should be enjoined, if any body, from acquiring the property in controversy.

(5) A writ of prohibition, and not an injunction, would be the proper remedy, if the plaintiff has a remedy.

J. C. Noel Jr.



R. W. Orr. Conf.  
203 Dr to Henry  
D. L. Jesse was Deft  
Answer of Deft

Filed 2nd September  
Recd 1904 H. L. Ewing  
Clock



R. W. Orr, Plff.  
vs  
D. L. Jesse et al. Defs. } In Chancery.

This cause on this day to be heard upon the Complainant's bill, and the defendants were permitted to file their joint-demurrer to said bill, in writing; and was argued by Counsel. On consideration <sup>thereof</sup> it is adjudged, ordered and decreed that said demurrer be sustained, and the bill dismissed, and the injunction dissolved, without damages. It further adjudged, ordered and decreed that the defendants recover their costs in this behalf expended, including an attorney's fee of fifteen dollars, and this cause is dismissed from the docket.



R. W. Orr. Plff.  
vs} In Chancery  
D. G. Jesau et al.  
Final decree

En Chy. O. B No 7  
page 538

Enter this  
H. A. W. Shuen  
Judge.



Know all Men by these Presents, That we  
*R. W. Orr & W. E. Orr.*

are held and firmly bound unto the Commonwealth of Virginia, in the sum of *(500.00)*  
*Five Hundred* Dollars,

to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. And we hereby waive the benefit of our exemptions as to this obligation, and also of any claim or right to discharge any liability to the Commonwealth arising under this bond, or by virtue of said office, post or trust, with coupons detached from the bonds of this State. Sealed with our seals, and dated this *31st* day of *August* one thousand nine hundred *four*.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the above bound *R. W. Orr*

on *his* bill in chancery against *D. L. Jusee, John Reasor and M. V. Olinger who comprise the School Board of York County Station District No. 1 of the County of Lee and State of Virginia.* addressed to the Judge of the *Circuit* Court of the *County of Lee*

has obtained from the said Judge an injunction to enjoin and restrain *The said School Board & their Successors in office from further proceeding to acquire by purchase or condemnation for Public Free School purposes the lot of ground in the bill mentioned & described & from conducting a Public Free School in the building on the aforesaid lot until the further order of the said Court.*

until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding the said injunction, that the plaintiff shall not have the benefits thereof until *he*

or some one for *him*, shall enter into a bond, with good security, in the clerk's office of the said court, payable to the Commonwealth of Virginia, in the penalty of *Five*

*Hundred* dollars, and conditioned to pay all such costs as may be awarded against the said plaintiff, and all such damages as shall be incurred in case the said injunction be dissolved. Now,

therefore, if the said *R. W. Orr* shall pay all such costs as may be awarded against *him*, and all such damages as shall be incurred in case the said injunction be dissolved, then this obligation to be void, otherwise to remain in full force and virtue.

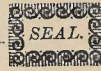
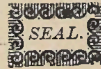
Executed in the presence of

*H. E. Ewing Clerk*

*R. W. Orr*

*James W. Orr*

*W. E. Orr*



In the Clerk's Office of the *Circuit* Court of the *County of Lee*

This day personally appeared before me *H. E. Ewing*, Clerk of the *Circuit* Court of the *County of Lee*

*James W. Orr and W. E. Orr*, and made oath that their estates, after the payment of all their just debts, and those for which they are bound

as security for others and expect to have to pay are worth the sum of *Five*  
*Hundred* dollars, over and above all exemptions allowed by law.

Given under my hand, this *31st* day of *August*, 19*04*

*H. E. Ewing* Clerk.



*R. W. Orr*

to { INJUNCTION  
BOND.

Commonwealth.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *D. L. Jussee, John*

*Reaser and M. V. Olinger, Trustees.*

*for Yokum Station School District No--*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on the *1st* Monday in *Sept.*, 190*4*, to answer a bill in chancery exhibited against *them* in our said court by

*R. H. Orr*

And have then there this writ. Witness, *H. T. Ewing* ~~A. B. MUNSEY~~, Clerk of our said Court,

at the court-house, the *31*, day of *August*, 190*4*, and in the 12*9th*

year of the Commonwealth.

*H. T. Ewing*, Clerk.



To enjoin and restrain the defendants, as The School Board of Yokum Station District No. — of The County of Lee and State of Virginia, and their successors in office from further proceeding to acquire by purchase or condemnation for Public Free School purposes The lot of ground in The bill mentioned & described & from conducting a Public Free School in The building on The aforesaid lot, until The further order of The Court. Bond with Security, having been executed by The Plaintiff as required by The Order of Injunction.

N. G. Ewing, Clerk.

W. M. Lee  
 vs.  
 The School Board of Yokum Station District No. — of The County of Lee and State of Virginia, and their successors in office from further proceeding to acquire by purchase or condemnation for Public Free School purposes The lot of ground in The bill mentioned & described & from conducting a Public Free School in The building on The aforesaid lot, until The further order of The Court. Bond with Security, having been executed by The Plaintiff as required by The Order of Injunction.  
 IN CHANCERY.  
 To /ot Sept Rules.  
 Lee Circuit Court.

Entered in for the 3<sup>rd</sup> day of September 1904.  
 by Attorney at Law, and John A. Lee, and further  
 represented as to M. V. Lee by Attorney at  
 Office City of New York to Sarah G. Lee  
 the wife of said M. V. Lee, living at the same  
 place of abode, the said M. V. Lee and  
 being found at the same place of abode  
 and the being a member of the family  
 the age of 16 years. J. A. Lee  
 P. M. Lee & J. C.